

**IN THE UNITED STATES BANKRUPTCY COURT FOR THE
WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

IN RE:)	
KIRKLAND HUTCHESON, LLC)	
Debtor,)	
)	
BANCORPSOUTH BANK, FKA)	
THE SIGNATURE BANK,)	Case No. 09-62695-ABF-11
Movant,)	
vs.)	
)	
KIRKLAND HUTCHESON, LLC,)	
Debtor.)	

**MOTION TO PROHIBIT USE OF CASH COLLATERAL, FOR
ADEQUATE PROTECTION, OR IN THE ALTERNATIVE,
MOTION FOR RELIEF FROM AUTOMATIC STAY**

COMES NOW MOVANT, BancorpSouth Bank, by and through its attorneys, Carnahan, Evans, Cantwell & Brown, P.C., and for its Motion to Prohibit Use of Cash Collateral, For Adequate Protection, or in the Alternative, For Relief From Stay states to the Court as follows:

1. On November 24, 2009, Kirkland Hutcheson, LLC (“Debtor”) filed a Voluntary Petition under Chapter 11 of the United States Bankruptcy Code and relief was ordered.
2. The Debtor has remained in possession of its assets as a Debtor-In-Possession since the date of the filing of the Petition.
3. Movant is the holder of the Promissory Note, Commercial Security Agreements, UCC Financing Statements and related loan documents (the “Loan Documents”) executed and delivered by Debtor, and more particularly described as follows:

<u>Exhibit No.</u>	<u>Description of Document</u>	<u>Date</u>	<u>Original Amount</u>
A	Promissory Note	06/28/2009	\$12,188,838.82
B	Deed of Trust	10/24/2005	4,115,000.00
C	Commercial Security Agreement	10/24/2005	N.A.
D	UCC Financing Statement	10/26/2005	N.A.
E	Modification of Deed of Trust	12/17/2007	10,262,500.00
F	Commercial Security Agreement	06/28/2009	N.A.
G	Modification of Deed of Trust	08/10/2009	12,188,838.82
H	Modification of Promissory Note	10/09/2009	N.A.

True and accurate copies of the above documents are attached hereto and incorporated by reference as Exhibits A through G respectively.

4. Movant's claim is secured by: Certain real property located in Branson, Taney County, Missouri, all inventory, accounts and other rights to payment, equipment, instruments, chattel paper, general intangibles, fixtures and documents, now owned or hereafter acquired, and all products and proceeds thereof as more particularly described in the Commercial Security Agreements attached hereto as Exhibits C and F.

5. Movant's liens on the Debtor's assets described above are duly perfected by the filing of the UCC-1 Financing Statement described above as Exhibit D in the office of the Secretary of State of Missouri and the Deed of Trust described above as Exhibit B, as modified.

6. As of December 22, 2009, there was due and owing on the Promissory Note described above, the following amounts:

Principal	Interest	Late Fees	Total
\$12,188,838.82	\$258,843.53	\$2,000.00	\$12,449,682.35

7. Interest, late fees, attorney fees and costs continue to accrue on the debt from and after December 22, 2009 pursuant to the terms of the Loan Documents.

8. Debtor is in default for failure to perform the terms of the Promissory Note and Commercial Security Agreements, including without limitation, failing to make installment

payments when due. As of the filing of this Motion, Debtor has failed to pay installments due under the Promissory Note for November and December, 2009 totaling \$139,302.12.

9. The Debtor has failed and refused and continues to fail and refuse, to provide Movant with adequate protection of its interest in the property which secures its debt to Movant.

10. Movant has not consented to the use of its cash collateral and no Order authorizing the use of cash collateral has been entered by this Court.

11. Upon information and belief, Debtor is using Movant's cash collateral without Movant's consent or an Order of this Court authorizing the use of cash collateral and to the extent the Debtor has engaged in the unauthorized use of cash collateral since the filing of the Petition herein, Movant is entitled to an administrative expense claim in the amount thereof.

12. In addition to the fact that the Debtor has failed to pay installments due under the Promissory Note for November and December, 2009, the real property collateral securing Movant's debt has been exposed to three separate Mechanic's Liens, specifically:

a. Lien by Jimmy Fletcher d/b/a Flash Heating and Air Conditioning in the amount of \$141,000. Movant has been named as a defendant in a suit filed by Jimmy Fletcher to enforce said lien in the Circuit Court of Taney County, Missouri, Case No. 09AF-CC01017.

b. Lien filed by Amazon Systems, Inc. in the amount of \$21,988. Movant has been named as a defendant in a suit filed by Amazon Systems in the Circuit Court of Taney County, Missouri, Case No. 09AF-CC00841.


c. Lien filed by Lloyd's Electric Supply, Inc. in the amount of \$5,354.20.

13. Upon information and belief, the collateral securing the debt owed to Movant continues to depreciate in value to the prejudice and detriment of Movant, and Movant is entitled to adequate protection.

14. Movant requests that the Court grant adequate protection pursuant to 11 USC § 361, that the Debtor be Ordered to provide adequate protection consisting of monthly payments to Movant pursuant to the Promissory Note, or in the alternative, that the Court lift the automatic stay as to Movant's collateral.

WHEREFORE, Movant, BancorpSouth Bank prays for an Order of this Court prohibiting the Debtor from using cash collateral of Movant and/or that Debtor be Ordered to pay Movant adequate protection payments; for allowance of an administrative expense claim in an amount equal to the amount of cash collateral used by Debtor without authorization since the filing of the Petition herein; for its costs and expenses incurred herein, including attorneys' fees; and for such other and further relief as the Court deems just in the premises.

Respectfully submitted,
CARNAHAN, EVANS, CANTWELL
& BROWN, P.C.

By 
Rodney H. Nichols
Missouri Bar No. 45741

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CERTIFICATE OF SERVICE

The undersigned certifies that a complete copy of the foregoing document was served upon the attorneys of record for each party to the above action:

☒ A. by enclosing same in envelopes addressed to said attorneys at their business addresses as disclosed in the pleadings of record herein, with first class postage fully prepaid, and by depositing said envelopes in a U.S. Post Office mailbox in Springfield, Missouri as set forth below;

David E. Schroeder
1524 E. Primrose St., Suite A
Springfield, MO 65804

Jerry L. Phillips
Office of the US Trustee
Room 3440
400 East 9th Street
Kansas City, MO 64106-1910

☐ B. by leaving same in the business office of said attorneys with a secretary thereof;

☐ C. by handing same to said attorneys;

☐ D. hand delivery;

☐ E. via facsimile transmission; or

☒ F. via electronic filing with the U.S. District Court, Western Division of Missouri.

on the 29th day of December, 2009, by the method checked above.



Attorney of Record